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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES  
LITIGATION

NO. CV-04-025 FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION *IN LIMINE* TO  
PRECLUDE EVIDENCE AND  
ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE  
CLASS REPRESENTATIVES

Hearing Date: March 3, 2010  
9:00 a.m.

WITH ORAL ARGUMENT

MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE AND ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 1 of 11

(CV-04-025-FVS)  
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## I. PRELIMINARY STATEMENT

Plaintiffs respectfully move *in limine* to preclude PricewaterhouseCoopers ("PwC") from introducing evidence or advancing argument concerning individualized issues relating to the Class Representatives.

In PwC's Trial Exhibit List, PwC lists numerous exhibits which have nothing to do with the issues in this Section 11 case. For example, PwC identifies Class Representatives' individual certifications and proof of claim forms in the prior Interpleader Settlement Agreement, (Exs. 7350, 7351), Pleadings and Correspondence Relative to Class Representatives' retention agreements with counsel and their appointment as Lead Plaintiffs (Exs. 6960), Class Representatives' letters of complaint (Exs. 6689), and Class Representatives' account statements (Exs. 6931, 6932, 6933, 6934, 6935, 6936, 6937, 6938, 7365, 7366, 7367, 7368). Each of these items is irrelevant or is unduly prejudicial under Federal Rules of Evidence 402 and 403, and the Court should preclude the introduction of such evidence and preclude argument relating to same.

MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE AND ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 2 of 11

(CV-04-025-FVS)  
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## II. ARGUMENT

### A. Pursuant to Federal Rule of Evidence 402, the Court Should Preclude All Evidence Relating to the Particular Circumstances of the Individual Class Representatives as Irrelevant.

On November 25, 2008, the Court certified this case as a class action finding that common issues clearly predominate and that there were no individualized issues impeding the trial of this matter. (Court Rec. 656) Nonetheless, it is apparent from PwC's Trial Exhibit List that PwC intends to litigate a host of individualized issues.

Federal Rule Evidence 402 states that "[e]vidence which is not relevant is not admissible." The issues in this case are quite simple and clear. This action is brought under Section 11 of the Securities Act of 1933. Section 11 imposes liability where a registration statement contains "an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading." 15 U.S.C. § 77k(a). There is no requirement that Plaintiffs prove reliance or due diligence. To the contrary, reliance is presumed. *Desai v. Deutsche Bank Securities Ltd.*, 573F.3d 931, 939 (9th Cir. 2009). Any evidence or testimony relating to the individual decisions of the Class Representatives to purchase Metropolitan Group securities – i.e. relating to "transaction causation" should be excluded from the trial, as such evidence would constitute "individualized" evidence contrary to the presumption of

MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE AND ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 3 of 11

(CV-04-025-FVS)  
[1459244 v9.doc]

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1 reliance and, would be irrelevant to the class-wide issues that must be  
2 resolved by the jury.

3 Accordingly, all of the evidence proffered by PwC relating to the Class  
4 Representative's individualized issues should be excluded from the trial in  
5 this action.  
6

7 **B. Pursuant to Federal Rule of Evidence 403, the Court Should Preclude**  
8 **All Evidence Relating to the Particular Circumstances of the Individual**  
9 **Class Representatives as it Would Cause Undue Prejudice to the**  
10 **Class.**

11 Even if the evidence relating to individual issues of the Class  
12 Representatives were considered relevant, this evidence is clearly prohibited  
13 by Rule 403 because it will confuse the jury and cause undue prejudice to  
14 the Class.

15 Federal Rule of Evidence 403 requires District Courts to exclude  
16 evidence "if its probative value is substantially outweighed by the danger of  
17 unfair prejudice, confusion of the issues, or misleading the jury . . . ."  
18 "Although relevant evidence is presumptively admissible, a court has the  
19 authority to exclude it if the risks posed by the introduction of the evidence  
20 significantly outweigh its probative worth." *White v. Ford Motor Co.*, 500  
21 F.3d 963, 977 (9th Cir. 2007). Evidence is "unfairly prejudicial if it will  
22 induce the jury to decide the case on an improper basis, . . . , rather than on  
23 the evidence presented." *United States v. Thomas*, 321 F.3d 627, 629 (7th

24 MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
25 EVIDENCE AND ARGUMENT CONCERNING  
26 INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 4 of 11

(CV-04-025-FVS)  
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1 Cir. 2003) (quoting *United States v. Pulido*, 69 F.3d 192, 201 (7th Cir.  
2 1995); see *Crawford v. Edmonson*, 764 F.2d 479, 484 (7th Cir. 1985)  
3 (unfair prejudice is the likelihood that the evidence will induce the jury to  
4 decide the case on an improper basis); see *United States v. Medina*, 755  
5 F.2d 1269, 1274 (7th Cir. 1985) (the prejudicial impact of evidence is  
6 measured according to the extent to which the jury might consider the  
7 evidence for purposes other than that for which it was intended).

8  
9 PwC has designated numerous documents which relate solely to the  
10 individual Class Representatives. These include, among other things: Class  
11 Representatives' individual certifications and proof of claim forms in the  
12 prior Interpleader Settlement Agreement (Exs. 7350, 7351), Pleadings and  
13 Correspondence Relative to Class Representatives' retention agreements  
14 with counsel and their appointment as Lead Plaintiffs (Exs. 6960), Class  
15 Representatives' letters of complaint (Exs. 6689), and Class  
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25 MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
26 EVIDENCE AND ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 5 of 11

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1 Representatives' account statements (Exs. 6931, 6932, 6933, 6934, 6935,  
2 6936, 6937, 6938, 7365, 7366, 7367, 7368).<sup>1</sup>

3  
4 None of this evidence is even remotely relevant to the class-wide  
5 issues that must be decided at trial. Indeed, the only purpose this evidence  
6 could serve would be to unfairly prejudice the Class' claims in the eyes of the  
7 jury by proving ulterior and irrelevant propositions, such as whether this  
8 particular Class Representative equitably deserves to recover or the amount  
9 of his recovery in the prior action. Any evidence which could cause the jury  
10

11 \_\_\_\_\_  
12 <sup>1</sup> In certain limited contexts, for example where a Class Representative lacks  
13 his or her subscription agreement, or confirmation letter, their account  
14 statement may be relevant to establish the Metropolitan Group securities  
15 they purchased. Otherwise, the account statements are unnecessarily  
16 cumulative, duplicative and confusing. In at least one instance PwC seeks a  
17 to introduce the entire brokerage account records of one Plaintiff, including  
18 securities having nothing to do whatsoever with the claims before this Court.  
19 What is clear is that PwC seeks to make this a trial about the Class  
20 Representatives, what they knew, why they invested, the details of their  
21 relationship with Class Counsel, *etc.*  
22  
23

24 MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
25 EVIDENCE AND ARGUMENT CONCERNING  
26 INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 6 of 11

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1 to believe that the particular circumstances of an individual Class  
 2 Representative disqualifies them from any recovery or otherwise reduces the  
 3 amounts to which that Representative is entitled to recover under Section  
 4 11's damages formula would be unfairly prejudicial to the Class, and thus,  
 5 has no place in a trial of class-wide issues. See Fed. R. Evid. 403, Adv.  
 6 Comm. Notes (evidence is unfairly prejudicial if it has an "undue tendency to  
 7 suggest decision on an improper basis, commonly, though not necessarily,  
 8 an emotional one").  
 9

10 Here, there is no basis to permit PwC to engage in irrelevant and  
 11 prejudicial arguments related to the individual plaintiffs, and there is  
 12 substantial risk of confusion and prejudice to the Class by the introduction of  
 13 such evidence.

### 14 III. CONCLUSION

15 Accordingly, Plaintiffs request that the Court enter an Order precluding  
 16 evidence and argument concerning individualized issues in this case  
 17 including, without limitation, Interpleader Settlement Agreement, (Exs. 7350,  
 18 7351), Pleadings and Correspondence Relative to Class Representatives'  
 19 retention agreements with counsel and their appointment as Lead Plaintiffs  
 20 (Exs. 6960), Class Representatives' letters of complaint (Exs. 6689), and  
 21 Class Representatives' account statements (Exs. 6931, 6932, 6933, 6934,  
 22 6935, 6936, 6937, 6938, 7365, 7366, 7367, 7368).  
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24 MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
 25 EVIDENCE AND ARGUMENT CONCERNING  
 26 INDIVIDUALIZED ISSUES OF THE CLASS  
 REPRESENTATIVES - 7 of 11

(CV-04-025-FVS)  
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1 Dated this 16<sup>th</sup> day of February 2010.

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25 EVIDENCE AND ARGUMENT CONCERNING  
26 INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 8 of 11

(CV-04-025-FVS)  
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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send notification of such filings to the CM/ECF participants listed below, and I will mail the same via U.S. Postal Service to the non-CM/ECF participant(s).

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MEM. RE: MOTION *IN LIMINE* TO PRECLUDE  
EVIDENCE AND ARGUMENT CONCERNING  
INDIVIDUALIZED ISSUES OF THE CLASS  
REPRESENTATIVES - 9 of 11

(CV-04-025-FVS)  
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REPRESENTATIVES - 10 of 11

(CV-04-025-FVS)  
[1459244 v9.doc]

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